

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMMANUEL JOSHUA MILLER,)
Petitioner,)
v.) Case No. 1:21-CV-269
ARMEL, et al.,)
Respondents.)

MEMORANDUM ORDER

This action was received by the Clerk of Court on September 27, 2021 and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On September 30, 2021, Magistrate Judge Lanzillo issued a Report and Recommendation recommending that the petition be summarily dismissed based upon Mr. Miller's failure to exhaust his state court remedies. ECF No. 4.

Petitioner filed "Objections" to the Report and Recommendation wherein he requests that this Court stay this action while he exhausts his state court remedies. ECF No. 5. *See also* ECF No. 6. Petitioner's request will be denied. *See Sherwood v. Beard*, 2012 WL 4018023, at *4 (M.D. Pa. Aug. 8, 2012) ("Moreover, in federal habeas corpus litigation additional considerations apply, considerations which caution against casually entering orders to stay plainly unexhausted federal habeas corpus petitions while state inmates litigate claims in state court. State prisoners seeking relief under § 2254 must also satisfy specific, and precise, procedural standards. Among these procedural prerequisites is a requirement that the petitioner

'has exhausted the remedies available in the courts of the State' before seeking relief in federal court. 28 U.S.C. § 2254(b). In instances where a state prisoner has failed to exhaust the legal remedies available to him in the state courts, federal courts typically will refuse to entertain a petition for habeas corpus. *See Whitney v. Horn*, 280 F.3d 240, 250 (3d Cir. 2002).").

After *de novo* review of the petition for writ of habeas corpus and the documents filed in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 16th day of December 2021;

IT IS ORDERED that the petition for writ of habeas corpus be summarily dismissed because Mr. Miller is currently litigating challenges to his March 3, 2020 judgment of sentence in the state courts.

IT IS FURTHER ORDERED that Mr. Miller's request for a stay be denied.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on September 30, 2021 [ECF No. 4] is adopted as the opinion of the court.



SUSAN PARADISE BAXTER
United States District Judge